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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Capitol Supply, Inc.

File: B-298123; B-298123.2; B-298123.3

Date: June 28, 2006

Robert Steinman for the protester.

Kacie A. Haberly, Esq., General Services Administration, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposal preparation instructions included in a commercial item solicitation for furniture and furnishings that require the submission of presentation boards which include photographs (rather than line drawings or renderings) of 90 percent of the items offered are reasonably based and not overly burdensome, where the solicitation is for commercial items, requires the submission of current catalogs as well as sample items, and the agency amended the solicitation to include the protested requirement because of the difficulties it encountered in evaluating submissions that included more than a limited number of line drawings and renderings.

DECISION

Capitol Supply, Inc. protests the terms of request for proposals (RFP) No. 3FNH-05-F015-N, issued by the General Services Administration (GSA), for furniture and furnishings. Capitol argues that certain provisions of the solicitation as revised are unnecessary and in excess of the agency's minimum needs, and unduly restrict competition.

We deny the protest.

The RFP, issued April 21, 2005, provides for the award of a fixed-price requirements contract for a base period of 1 year with four 1-year option periods in support of the agency's Packaged Home Program (PHP). According to the agency, the PHP, through a memorandum of understanding between GSA and the Department of State, has "successfully provided U.S. Government personnel stationed at diplomatic and consular posts abroad with their household furniture and furnishing

requirements” since the inception of the PHP in the late 1950s. Contracting Officer’s Statement at 1; RFP at 88. Under the contract to be awarded here, furniture and furnishings will be available to certain “high-level” government personnel “as ‘package’ orders (i.e., a complete one, two, or three bedroom home) or individual rooms,” and as separate pieces. Agency Report (AR) at 2. The solicitation specifies that “[t]o ensure availability, furniture and furnishings supplied under this contract shall be commercial residential products,” and provides that “[c]ommercial items are supplies or services used for other than Government purposes and sold or traded to the general public in the course of normal business operations.” RFP at 89.

The solicitation requires that furniture be offered and available to the agency during the course of contract performance in 18th Century, Louis Philippe, Mission, and Contemporary styles, and “broadly define[s]” the distinguishing characteristics of each of these four styles. RFP at 89. The solicitation also includes detailed “minimum requirements for materials to be used in construction and assembly” of the furniture and furnishings to be provided. RFP at 95-102.

The solicitation includes detailed proposal preparation instructions. The RFP specifies that the technical proposal is to consist of the following 11 sections: overview, descriptions of each room, index of all deviations and minor modifications, support services plans, overall management plan, past performance, commercial product information, presentation boards, cutaway illustrations, finish step panels, and construction material data sheets. RFP at 158-60. The commercial product information section of the technical proposal is to include “current catalogs and price lists for each style line proposed” and states that “sales data (categorized by Government and non-Government sales) may be requested for any/all lines/items.” RFP at 159.

The solicitation provides for the award of a contract to the offeror submitting the proposal determined to represent the best value to the government, based upon technical/quality, management, and cost/price evaluation factors.¹ RFP at 163-64. The solicitation informs offerors that the agency intends to conduct discussions, and that “[s]ource selection samples will be requested from each offeror who is determined to be in the competitive range.”² RFP at 163. The solicitation states that the agency will be “more concerned with obtaining superior technical/quality and

¹ The RFP provides that the technical/management factor is comprised of a workmanship/construction subfactor and an overall presentation/style subfactor, while the management factor is comprised of program support services, overall management plan, and past performance subfactors. RFP at 163.

² The RFP lists more than 20 pieces of furniture and furnishings that “must be submitted for evaluation,” such as a “dining arm chair.” RFP at 160.

management features [than] with making an award at the lowest overall cost to the Government.” RFP at 164.

The agency received four proposals by the RFP’s closing date of August 9, 2005. The agency found in evaluating proposals for compliance with the solicitation’s proposal preparation instructions and specifications that the proposals were lacking in certain areas. As noted, the solicitation requires that offerors include “presentation boards” as part of their proposals as follows:

Presentation boards must include clear, color photographs of all house styles, student bedrooms and supplemental items. Each photograph shall be identified with manufacturer, style or line, model number, and dimensions. A limited number of line drawings may be used to supplement the photographs; however, photographs must be provided for each manufacturer and style offered.

RFP at 160. The agency explains that “presentation boards are intended to be a collection of photographs from each offeror’s catalog, presented on poster board, to represent the full complement of furniture and supplemental items being offered in response to the RFP.” AR at 6. The agency found, however, that the presentation boards submitted by the protester included “many renderings,” including “almost 100% renderings of wood furniture items on some boards.” *Id.* The agency explains that “[t]he excessive number of line drawings and renderings made it very difficult, if not impossible, to adequately evaluate the offered product.”³ AR at 7.

Because the agency found that the unexpectedly large quantities of line drawings and renderings submitted proved impossible to adequately evaluate in terms of dimensions, hardware, and features, the agency determined that it was necessary to clarify the solicitation’s requirements with regard to the submission of presentation boards. *Id.* Specifically, the solicitation as issued required the submission of “clear, color photographs of all house styles, student bedrooms and supplemental items,” and only allowed that “[a] limited number of line drawings may be used to supplement the photographs.” RFP at 160. In view of the presentation boards presented, the agency determined that the phrase “limited amount” needed to be objectively defined, and that “[i]n order to maximize competition and allow the protester to remain in the competition, should it choose to,” “renderings,” which had

³ According to the agency, “[a] rendering in the context of this procurement is an artistic representation, in perspective view, of the furniture items being offered. Renderings are basically ‘colored/shaded in’ line drawings and were therefore, considered to be in the same category of illustration as line drawings, which can also be in perspective view, is generally a pen and ink outline and not shaded or colored, as is a rendering.” AR at 6-7.

not been mentioned in the initial solicitation, would be specifically identified in the RFP “as a substitute for line drawings.” AR at 7.

Accordingly, the agency issued amendment 10 to the solicitation on March 17, 2006. Besides presentation boards, Amendment 10 made a number of revisions to the purchase description, including certain of the minimum requirements for the construction and assembly of certain items. With regard to the presentation boards, amendment 10 (at 2) provides as follows:

‘A limited number of line drawings’ is defined as not exceeding 10% of the items shown on a presentation board, broken down by room or accessory grouping. When making this calculation, each item, as defined by model number, is counted one time. Calculation results are rounded to the nearest whole number. Calculations are based on counting only seating, casegoods (including tables, headboards, mirrors) and lamps shown on the board(s). Renderings are considered to be in the same category as line drawings.

Capitol challenges the terms of the solicitation, arguing, among other things, that the revisions made by amendment 10 to the proposal preparation instructions for the presentation boards were unnecessary and “unduly restrictive because only furniture manufacturers who have existing products will be able to provide photographs.” Protest (B-298123) at 4. Capitol asserts here that “[a]n artistic rendering provides the same ability to evaluate products as a photograph as an artistic rendering emphasizes the correct reproduction of light-and-shadow and the surface properties of the depicted objects.” *Id.* In support of this assertion, Capitol provided with its protest copies of the presentation boards it had submitted to the agency with its proposal. *Id.*, exh. B. The protester represents that its manufacturers “currently do not manufacture furniture to the Solicitation’s specifications and will have to make minor modifications to their commercial lines to accommodate the GSA’s requirements,” and that “[a]s a result, Capitol does not have photographs and will not have photographs until the first piece of furniture manufactured to GSA’s specifications has been made.” Protester’s Supp. Comments (May 24, 2006) at 7-8. Simply put, Capitol states that it “cannot take photographs of what is not yet in existence.” Protester’s Supp. Comments (May 30, 2006) at 2.

The amount of information to be included in proposals and proposal format requirements are matters properly within the judgment of contracting officials; we will not sustain a protest challenging that judgment unless it is unreasonable. Essex Electro Eng’rs, Inc., B-252288.2, July 23, 1993, 93-2 CPD ¶ 47 at 5. Given the context of this procurement as well as the agency’s explanation for the revisions to the proposal preparation instructions set forth previously, we conclude that the agency’s requirements regarding the submission of presentation boards are reasonable.

We have reviewed the copies of the presentation boards submitted by the protester in support of its protest, as well as certain actual presentation boards submitted to

the agency with initial proposals (including those submitted by the protester). Based upon our review of these boards, we find reasonable the agency's position that the extensive line drawings and renderings of the furniture made it difficult, in comparison to the presentation boards' photographs, to evaluate the offered furniture and furnishings in terms of dimensions, hardware, and features. That is, the photographs appear, consistent with the views of the agency, to provide more detail with regard to the furniture and furnishings offered than do the renderings or line drawings.

As to the protester's complaint regarding the burden this requirement imposed on it, we note that the RFP's proposal preparation instructions include a section that expressly recognizes that the furniture and furnishings offered may deviate or "require minor modification" from the solicitation's purchase description "in terms of materials, construction, and/or dimensions." RFP at 158. Given this provision, we fail to see why the protester or any other offeror was precluded from providing photographs of existing furniture or furnishings and noting how the offered products deviated from and/or would need minor modification to meet the solicitation's requirements.

Further, as mentioned previously, the solicitation specifies that "[t]o ensure availability, furniture and furnishings supplied under this contract shall be commercial residential products," and provides that "[c]ommercial items are supplies or services used for other than Government purposes and sold or traded to the general public in the course of normal business operations." RFP at 89. We fail to see, and the protester has not explained, how an offeror that can comply with the requirement that the furniture or furnishings offered be commercial items or products, would find it difficult or, in the protester's case based upon the protester's representations, impossible, to provide photographs of the offered items under the circumstances here. In this regard, we also find the protester's position that the presentation board format requirement is overly burdensome because "Capitol does not have photographs and will not have photographs until the first piece of furniture manufactured to GSA's specifications has been made" inconsistent with a solicitation requiring commercial items and products, the submission of commercial product information, including "current catalogs," and the submission of numerous sample items for evaluation during the conduct of the procurement. RFP at 89, 159, 163; Protester's Supp. Comments (May 24, 2006) at 8. Thus, we find the agency's requirement regarding the provision of photographs on the presentation boards to be reasonable.

Capitol has made a variety of other challenges to the terms of Amendment 10 and to the alleged failure of the agency to provide it adequate information to submit an

acceptable revised proposal.⁴ However, as set out above, Capitol concedes that it cannot comply with the requirement that the presentation boards contain 90 percent photographs. Because Capitol, by its own admission, cannot submit a proposal compliant with the proposal preparation instructions, which we have found to contain reasonable requirements, it is not an interested party under our Bid Protest Regulations eligible to pursue the remainder of its protest. 4 C.F.R. § 21.0(a) (2006); Carahsoft Tech. Corp., B-297112, Nov. 21, 2005, 2005 CPD ¶ 208 at 3 n.3.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ Specifically, Capitol also argues that the revisions made by amendment 10 to the number of finish steps and thickness of the back panels required on certain pieces of furniture (each of which actually relaxed the requirement set forth in the RFP as issued), as well as the gloss levels required, are overly restrictive of competition. The protester further argues that the solicitation's description of the styles required, as set forth in the solicitation as issued, and the agency's use of the terms "formal" and "informal" in amendment 10, are ambiguous. Capitol also asserts that the agency's letters to offerors in anticipation of establishing the competitive range constituted discussions, which according to the protester were inadequate.